

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 1126

BRIAN MAYBERRY,
Plaintiff,

v.

JEFFREY M. BAKER,
Defendant.

ORDER ON DESIGNATION

1. **THIS MATTER** is before the Court pursuant to the Determination Order issued on 9 April 2021 by the Honorable Paul Newby, Chief Justice of the Supreme Court of North Carolina, directing the undersigned to determine whether this action is properly designated as a mandatory complex business case in accord with N.C.G.S. § 7A-45.4(a) (the “Determination Order”).

2. Plaintiff Brian Mayberry (“Mayberry”) filed the Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction (the “Complaint”) initiating this action in New Hanover County Superior Court on 24 March 2021, asserting a claim for declaratory judgment and seeking injunctive relief against Defendant Jeffrey M. Baker (“Baker”). (*See* Verified Compl. & Mot. TRO & Prelim. Inj. ¶¶ 29–37 [hereinafter “Compl.”].) Baker timely filed the Notice of Designation of Mandatory Complex Business Case (the “NOD”) on 8 April 2021.

3. Baker contends that designation as a mandatory complex business case is proper under N.C.G.S. § 7A-45.4(a)(1). Designation under this section is proper if the action involves a material issue related to “[d]isputes involving the law governing corporations, except charitable and religious organizations qualified under G.S. 55A-

1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.”

4. This case arises out of a contract dispute. Mayberry and Baker are 50/50 owners of 116 Market, LLC (the “LLC”), which holds an interest in real property located in Wilmington, North Carolina. (*See* Compl. ¶¶ 4–6.) Mayberry operates a restaurant at that location pursuant to a lease agreement with the LLC. (*See* Compl. ¶¶ 7–8.) In connection with an alleged default under the lease, Mayberry and Baker entered into an agreement on 8 September 2020 (the “Agreement”) in which the parties agreed to a potential transfer of the other party’s interest in the LLC should certain triggering events occur. (*See* Compl. ¶ 9.) According to the Complaint, Baker believes that Mayberry has breached the terms of the Agreement and has demanded that Mayberry transfer his interest in the LLC to him and vacate the real property in Wilmington. (*See* Compl. ¶¶ 15–16, 22, 25.) Mayberry alleges that he is not in default of the Agreement and seeks a declaratory judgment regarding the rights of the parties thereunder. (*See* Compl. ¶¶ 24, 29–32.)

5. In support of designation under section 7A-45.4(a)(1), Baker argues that the dispute will involve “determining the membership interests of the parties in [the LLC.]” (Notice Designation Mandatory Complex Bus. Case 1 [hereinafter “NOD”].) Baker also contends that designation under this section is proper because the “LLC’s Operating Agreement and statutory corporate governance laws are implicated[.]” (NOD 1.)

6. Although the Complaint's subject matter and requested relief involve the status of the parties' respective membership interests in the LLC and their associated rights, a review of the NOD and the Complaint's allegations clearly demonstrate that resolution of Mayberry's asserted claim requires only a straightforward application of contract law principles and does not implicate the law governing limited liability companies under N.C.G.S. § 7A-45.4(a)(1). See *Grindstaff v. Knighton*, 2020 NCBC LEXIS 98, at *2–3 (N.C. Super. Ct. Sept. 1, 2020) (declining to designate under (a)(1) where plaintiff's claims involved only breach of contract); *Grifols Therapeutics LLC v. Z Automation Co.*, 2019 NCBC LEXIS 91, at *3 (N.C. Super. Ct. July 3, 2019) (declining to designate under (a)(1) where LLC's claims involved only breach of contract); *Innovative Agriproducts, LLC v. Fins & Feathers' Charter & Com. Fishing, LLC*, 2019 NCBC LEXIS 98, at *5 (N.C. Super. Ct. Apr. 23, 2019) (declining to designate under (a)(1) when "Defendants' alleged misconduct—[Defendants' alleged misuse of the corporate form]—reflects matters governed by the law of contract, not a dispute involving the law governing corporations, partnerships, or limited liability companies").

7. Based on the foregoing, the Court determines that this action shall not proceed as a mandatory complex business case under N.C.G.S. § 7A-45.4(a) and thus shall not be assigned to a Special Superior Court Judge for Complex Business Cases.

8. Consistent with the Determination Order, the Court hereby advises the Senior Resident Superior Court Judge of Judicial District 5 that this action is not properly designated as a mandatory complex business case so that the action may be

treated as any other civil action, wherein the parties may pursue designation as a Rule 2.1 exceptional case with the Senior Resident Judge.

9. The Court's ruling is without prejudice to the right of the parties to seek designation of this matter as a mandatory complex business case as otherwise provided under section 7A-45.4.

SO ORDERED, this the 13th day of April, 2021.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge